

REMARKS

Claim Rejections

Claims 8 and 10-12 stand rejected under 35 U.S.C. 101 as directed to non-statutory subject matter.

Claims 8, 10-18, 24-33 and 39-48 stand rejected under 35 U.S.C. 102(e) as anticipated by U.S. Patent No. 6,321,263 (Luzzi et al.).

Claim Amendments

The claims have been amended to eliminate the non-statutory subject matter rejection.

The claims have also been amended to patentably distinguish over Luzzi et al.

The Cited Art

Luzzi et al. discloses a system for monitoring, from a client computer, performance of an application program residing on a server computer. A probe program residing at the client computer generates requests for the services of the application program and records transaction records based upon service responses. (Abstract).

Specifically, an application monitoring and alerting (AMA) probe 201 is embodied in a client computer 106 which is coupled to a server computer 202. The server computer 202 includes an application program 203. The performance of the application program is accessed by the monitoring and alerting activities of the AMA probe 201. (Col. 9, lines 47-58).

In operation, the AMA probe 201 establishes a session with the server computer 202 by requesting the services of the application program 203. Session establishment is actuated by a service request 210 sent from the AMA probe 201 over a network link 206 to the server computer 202. Correspondingly, the server computer's application program 203 provides a service response 211 over the network link 206 back to the requesting AMA probe 201. (Col. 9, lines 59-67).

This sequence of transactions is precisely the same sequence of transactions undertaken by a customer of the computer network 100 seeking the services of the application program 203 on the server computer 202 at the client computer 106. In essence, by monitoring an application program and providing alerts based upon the above-discussed sequence from the view point of

the AMA probe 201, the system of Luzzi et al. is said to achieve a realistic picture of the performance of the application program 203 from the vantage point of the customer using the application program over the distributed computing system 100 at the client computer 106. (Col. 10, lines 1-15).

The AMA probe 201 may receive a number of different types of service responses from the server computer 202. For example, if the application program 203 on the server computer 202 properly responds to the service request, the AMA probe will receive an indication of a successfully completed request. Alternatively, if the server computer 202 is unavailable to respond to the service request 210, the request will time out after a predetermined period, and the AMA probe 201, based upon receiving no response during the time out period, will record that the service computer is not available. This can be viewed as an unsuccessful service response 211. (Col. 10, lines 29-41).

Applicants' Claimed Invention Is Not Anticipated

Luzzi et al. does not disclose each and every limitation of claims 8, 10-18, 24-33 and 39-48. Thus, these claims are not anticipated by Luzzi et al.

Luzzi et al., as noted, discloses a system for monitoring software. However, that system is very different from Applicants' claimed invention.

For instance, Luzzi et al. includes a remote central repository 306. The repository 306, however, is not a central computer as stated in the Office Action. (page 4). Instead, it is a data storage device which stores data gathered from multiple probes 201. (Col. 12, lines 1-9).

Further, the monitored application program 203 is installed at the server computer 202. It is not installed at the central repository 306 which was said in the Office Action to be a central computer.

Also, the alerting mechanism 205 of Luzzi et al. is not located at the central repository 306. Rather, the alerting mechanism 205 is installed at the client computer 106. (Figure 2 of Luzzi et al.).

Additionally, the monitoring application program 203 is not a monitoring apparatus as stated in the Office Action. (page 4). Instead, the application program 203 is the program being monitored by the AMA probe 201. (Col. 9, lines 47-58).

Later, in the Office Action, in "Response to Arguments", the interpretation of Luzzi et al. is changed. (pages 11-13). There it was said that the central computer is the client computer

106, and that a first computer or first site is the server computer 202. It was also admitted here that Luzzi et al. “teaches that the AMA probe [201]... is located at the central computer [106].”

Thus, it is apparent that Applicants’ claimed invention is not anticipated by Luzzi et al. For example, the probe recited in claim 13 is installed on a first computer at a first site, while the monitoring apparatus is installed in a central computer. The probe is not located at the central computer.

The feature of a central monitoring apparatus, located apart from the probe, has several benefits. For example, a central monitoring apparatus can manage probe data collected from the perspective of many individual computers on a network, as is shown in the embodiment illustrated in FIG. 1. (Applicants’ specification, p. 4, ll. 8-13). This allows filters to be defined specifically for particular computers. For example, each location might have a different target number of transactions. However, filters that are the same for multiple sites may be efficiently combined. (Applicants’ specification, p.4, ll. 15-19). For example, several sites may have equivalent targets for the number of fixes applied to software on a computer. In cases where all locations use the same filter, this filter may be applied equally at the central location rather than on each individual computer on the network. (Applicants’ specification, p. 4, l.8). For instance, all casinos may set as a target being open a certain number of days.

Setting filter values at a central location allows filters to be changed without requiring the computers with probes or the probes themselves to be updated. In this way, each computer with a probe need not separately analyze the data, but rather can send the data to a central location, which allows for greater efficiency and control.

Luzzi et al. fails to disclose a monitoring apparatus separate from the probe, as is recited in claim 13, that tests the values and generates alert messages. Instead, Luzzi et al. discloses a system in which the computer on which a probe is located performs the monitoring for the probe data and sends alerts based on probe values.

For instance, as explained in col. 5, ll. 63-67, Luzzi et al. teaches that “the exceeding of such defined thresholds will cause the client computer to generate an[] alert signal which may be received and acted upon by service entities...” Luzzi et al. explains again in col. 11, ll.14-34 that the probe, not a central monitoring apparatus, monitors for values outside a predetermined range. In Luzzis’ et al. system, each computer with a probe must separately monitor data received from the probe and compare it against thresholds. Although Luzzi et al. discloses a central repository in col. 6, ll. 15-18, this does not constitute a central monitoring apparatus as recited in claim 13 because it merely records data rather than performing active monitoring. Luzzi et al. fails to

disclose a central monitoring apparatus, so Luzzi's et al. system does not offer the benefits of consolidated control or the efficiency of combined filter values. Rather, each computer must separately perform monitoring functions.

Because Luzzi et al. fails to disclose or suggest at least one feature of claim 13, it is respectfully submitted that claim 13 is not anticipated by Luzzi et al. Thus, the rejection of claim 13 under 35 U.S.C. 102(e) should be withdrawn.

Claims 8, 24 and 39 have been amended to incorporate similar features as claim 13. Therefore, the rejections of these claims should be withdrawn for similar reasons as above.

The rejections of the dependent claims should also be withdrawn. The various dependent claims incorporate all of the features of the independent claims on which they are based and, therefore, are not anticipated for at least the reasons discussed above.

Conclusion

In view of the foregoing, it is respectfully submitted that all the claims are now in condition for allowance. Accordingly, allowance of the claims at the earliest possible date is requested.

If prosecution of this application can be assisted by telephone, the Examiner is requested to call Applicants' undersigned attorney at (510) 663-1100.

If any fees are due in connection with the filing of this amendment (including any fees due for an extension of time), such fees may be charged to Deposit Account No. 504480 (Order No. IGT1P319).

Dated: August 29, 2008

Respectfully submitted,
Weaver Austin Villeneuve & Sampson LLP

/William J. Egan, III/

William J. Egan, III
Reg. No. 28,411

P.O. Box 70250
Oakland, CA 94612-0250